IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE SIXTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE D.S.R.VARMA

WRIT PETITION NO : 7658 of 2005

Between:

1.M/s. Rajni Food Products, A Partnership firm, Having its Factory at Plot No.73/D, Kattedan, Hyderabad, Rep. by its Managing Partner, Sri Surender Kumar Agarwal.
2.M/s. Rex Food Products, A Partnership Firm, Having Factory at Plot No. 58/C, Kattedan, Hyderabad, rep. by its Authorised Signatory Sri Sureshchand Agarwal.

..... PETITIONERS

AND

1.The Commissioner of Police, Cyberabad, at Ranga Reddy District.
2.The Station House Officer, P.S. Rajendra Nagar, Cyberabad,
Ranga Reddy District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ Order or direction more particularly one in the nature of Writ of Mandamus by declaring the action of the respondents in interfering with the manufacturing and trading activities of the petitioners, as illegal, arbitrary and unconstitutional besides violative of Article 19(1)(g) and Article 300A and consequently direct the respondents not to interfere with the business of Manufacture of Biscuits and Trading activity of the petitioners and pass such other order/s as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Counsel for the Petitioner: MR.B.CHANDRASEN REDDY

Counsel for the Respondent Nos.1 and 2: GP FOR HOME

The Court made the following:

THE HONOURABLE SRI JUSTICE D.S.R.VARMA

W.P.NO.7658 OF 2005

ORAL ORDER:

Heard both sides.

2. Petitioners seek a writ of Mandamus to direct the respondents not to interfere with their business of manufacture of biscuits and trading activity.

3 . Petitioners claim that they are engaged in the business of manufacture of biscuits and also in trading of raw materials for biscuit industry. The first petitioner claims to be manufacturer of about 40 products under three different brands, namely Rajni, Royal and Choice. The second petitioner claims to be the manufacturer of about 40 products under three different brands, namely Rex, Ricky and Bharat.

4. According to the petitioners, M/s Britannia Industries Limited and I.T.C. Limited have filed Suit Nos.934 of 2005 and 935 of 2005 against one M/s Raj Agro Products Private Limited, Hyderabad, for the alleged infringement of the artistical work of their labels namely “Tiger” and “Sunfeast”. It was alleged in those suits that M/s Raj Agro Products Private Limited was using the same artistical work of the plaintiffs in the said suits for the products manufactured at the factory of M/s Raj Agro Products Private Limited, under the brands “Trigger” and “Sunrise”.

5. The High Court of Bombay, in Notice of Motion No.924 of 2005 in Suit No.934 of 2005 and Notice of Motion No.925 of 2005 in Suit No.935 of 2005, passed *ex parte* injunction orders on 28.3.2005, in the following manner:

> "That pending the hearing and final disposal of the Suit, the Court Receiver, High Court, Bombay, be appointed receiver of all the infringing copies of the impugned work marks and impugned label marks, exhibit "H" to the plaint and the Defendant's wrappers and all articles, dyes, papers and things bearing the impugned work marks SUNRISE and/or SUNRISE GLUCOSE and/or any other variant thereof, with all powers under Order 40 Rule 1 of Civil Procedure Code 1908, including the power to break open lock and enter premises to take possession of the said infringing material from the Defendants, their servants, agents, distributors, associate concerns and to handover the same to the plaintiffs with a direction to the Commissioner of Police and/or officer in charge of Police Station having jurisdiction, to assist and help the Court Receiver.
>
> That pending the hearing and final disposal of the suit, the defendants themselves, their servants and agents be restrained by an order and injunction of this Hon'ble Court from in any manner using and/or exposing or offering for sale any goods bearing the impugned label, being exhibit "H" to the plaint or any colourable imitation or substantial reproduction of the plaintiff's artistic work, being exhibit "E" to the plaint so as to infringe the plaintiff's copyright in the original artistic work, exhibit "B" to the plaint".

6. Pursuant to the aforesaid interim orders, M/s. I.T.C and Britannia Companies have filed a complaint under Section 63 of the Copyright Act and Sections 415, 420 r/w Section 120-B of the Indian Penal Code against the first petitioner before the 2nd respondent and the same was registered as FIR No.181 of 2005 on 1.4.2005. The Court Receivers of the High Court of Bombay, along with about 100 policemen of 2nd respondent and the representatives of the

abovesaid companies, have entered the factory of the petitioners, after seizure of products at M/s Raj Agro Products Private Limited. Panchanamas were conducted on 1.4.2005 stating that the alleged infringing material of “Trigger” and “Sunrise” of M/s Raj Agro are loaded in the trucks and handed over to the representative of the abovesaid companies, which was seized at M/s Raj Agro Products Private Limited. Apart from that, the police have also seized the biscuits, which are manufactured under the label of ‘Sunshine’ by the 1st petitioner and ‘Sunshakti Glucose’ biscuits, manufactured by the 2nd petitioner on the ground that they are deceptively similar to ‘Sunfeast Glucose’ products of M/s I.T.C. Limited.

7. It is the contention of the learned counsel appearing for the petitioners that the petitioners have several other business activities in addition to the said two products of biscuits and that they are manufacturers and sellers of various other products.

8 . The grievance of the petitioners, who are involved in various business activities like manufacturing and selling of biscuits of Sunshine and Sunshakti brands, is that the respondents are interfering with their lawful activities without any authority of law; that the petitioners are having different entities and they are no way concerned with M/s Raj Agro Products Private Limited, Hyderabad, and that there are no interim orders passed by the High Court of Bombay or any other Court against the petitioners. Therefore, it is the case of the petitioners that the respondents have no manner of right to interfere with the business activity of the petitioners.

9 . The factual background, in brief, appears to be that two suits in Suit Nos.934 of 2005 and 935 of 2005 have been filed before the

High Court of Bombay seeking injunction against M/s Raj Agro Products Private Limited by two different Companies and interim orders were granted against the said M/s Raj Agro Products Private Limited.

10. Admittedly, the petitioners are manufacturing the biscuits under the name of 'Sunshine' and 'Sunshakti'. The petitioners are not parties to the aforesaid suits filed by the companies, referred to above, viz., I.T.C Limited and Britannia Industries Private Limited companies and there is no order of injunction against the petitioners granted by any other competent civil Court. A perusal of the abovementioned interim orders would reveal that there is injunction against M/s Raj Agro Products Limited only.

11. In fact, there is no suit filed nor there was any preventive order passed by the High Court of Bombay or any other competent civil Court against the petitioners restraining them from doing or carrying on any particular activity. In such circumstances, *prima facie*, the business activity of the petitioners cannot be interfered with by the respondents, except in accordance with law or under the orders of a competent Court.

12. Having regard to the facts and circumstances of the case, it is neither expedient nor proper for this Court, to express any opinion or record any findings on the merits or otherwise of the matter, exercising extraordinary jurisdiction under Article 226 of the Constitution of India inasmuch the factual aspects of the matter have to be verified with due care. However, the present writ petition can be closed with certain directions.

13. The respondents are therefore directed to verify as to whether any suit is filed or any order of injunction is issued against the petitioners relating to the products manufactured/sold by the petitioners under the brand names of ‘Sunshine and Sunshakti’. In case it is found that there was no suit or any other proceeding pending against the petitioners, or no order of interim injunction had been issued against the petitioners restraining them from doing any particular activity, the respondents shall not interfere with the business activity of the petitioners in respect of manufacturing or selling of the two products under the brand names of “Sunshine and Sunshakti”.

14. At this stage, the learned counsel appearing for the petitioners gives an undertaking that the petitioners will not sell the products viz., Sunshine and Sunshakti”.

15. For the foregoing reasons and having regard to the facts and circumstances, particularly in the light of the undertaking given by the learned counsel appearing for the petitioners, the respondents are directed not to interfere with the production and marketing of any of the other products, which are not covered by the interim orders passed by the High Court of Bombay, in the suits, referred to above.

16. With the above directions, the writ petition is disposed of, at the stage of admission. However, there shall be no order as to costs.

D.S.R.VARMA, J

06TH APRIL, 2005

NOTE:

Issue C.C. by tomorrow

(BO)

KRK/JSU

To:

1.The Commissioner of Police, Cyberabad, at Ranga Reddy District.
2.The Station House Officer, P.S. Rajendra Nagar, Cyberabad,
Ranga Reddy District.

3.Two CCs to the Government Pleader for Home, High Court Buildings, Hyderabad (OUT).

4.Two CD copies.

THE HONOURABLE SRI JUSTICE D.S.R.VARMA

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